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DEENA DEARDURFF SCHMIDT

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF CALIFORNIA

DEENA DEARDURFF SCHMIDT, Plaintiff, v. BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, SAN DIEGO STATE UNIVERSITY, DOES 1-15, Defendants.	CASE NO. 07-CV-2343DMS(WMC) FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff alleges:

Nature of Action

1. This action seeks remedy for Plaintiff Deena Deardurff Schmidt for discrimination and retaliation by Defendants Board of Trustees of the California State University, San Diego State University, and Jeff Schemmel in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq., which forbids sex discrimination in any education program or activity receiving federal financial assistance, and of California's anti-discrimination in employment laws, Govt. Code §12940 et seq.

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Parties

2. Plaintiff Deena Deardurff Schmidt is a resident of the county of San Diego, California. In the 1970s, Schmidt was a world class competitive swimmer who swam on the United States' team. During the 1972 Olympic Games, Schmidt won a gold medal while swimming on the United States' team. Between 1994 and August 2007, Schmidt was employed as the head coach of San Diego State University's women's swimming and diving teams.

3. Defendant Board of Trustees of the California State University ("Board of Trustees") is the governing body of the California State University, a public university in the State of California. The Board of Trustees is an employer within the meaning of Govt. Code §12926(d), a university within the meaning of 20 U.S.C. §1687(2)(A), and a recipient of federal educational funding.

4. Defendant San Diego State University ("SDSU") is a campus of the California State University. SDSU is an employer within the meaning of Govt. Code §12926(d), a university within the meaning of 20 U.S.C. §1687(2)(A), and a recipient of federal educational funding. SDSU is located within the judicial district of this Court.

5. Plaintiff sues DOES 1-15 by fictitious names because she is presently unaware of their identity. Each DOE defendant is legally responsible in some manner for the harm caused to Schmidt as alleged in this complaint.

6. At all times material, Defendants, and each of them, were the agents and employees of each other and acted in the course and scope of such agency and employment.

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Venue

7. Venue is proper under C.C.P. §395(a) because SDSU is located, the contracts of employment between SDSU and Schmidt were entered, and the wrongs alleged in this complaint were committed in the county of San Diego.

Factual Allegations

8. In 1994 SDSU hired Schmidt on a part time basis as the head coach for the women's swimming, diving, and water polo teams when those teams were re-instated by SDSU at that time.

9. In 1995 and in succeeding years until 2007, SDSU retained and reappointed Schmidt as the head coach for the women's swimming and diving teams on a full time, salaried basis. From 1994 to about 1998 Schmidt served as head coach of the women's water polo team.

10. Between 1994 and 2007, Schmidt was qualified to serve as head coach of the women's swimming, diving, and, when applicable, water polo teams and ably and competently performed her duties in those capacities.

11. SDSU's women's swimming and diving teams are in NCAA Division 1, competing at the highest level of intercollegiate athletics. There are approximately 200 NCAA Division one women's swimming teams in the country. SDSU does not and since 1994 has not had a men's swimming or diving team.

12. When Schmidt started work as head coach and for the first few years of her employment, SDSU had a swimming pool on the SDSU campus which was compliant with NCAA standards in which the women's swimming team could train and compete. The campus pool

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was not NCAA compliant for water polo so the water polo team had to train and compete in off campus facilities.

13. In the fall of 1996, SDSU closed the campus pool for upgrades. Both the women's swimming and water polo teams were forced to train and compete in off campus facilities not owned or operated by SDSU.

14. On or about 1997, Schmidt was advised by then SDSU Athletic Director Rick Bay that he and SDSU intended to build an athletic center on the SDSU campus location where the swimming pool was located. The athletic center was to include a number of facilities, including the offices of the Athletic Director. Schmidt objected to the closure of the pool to the Athletic Director and his assistant because the women's swimming and diving teams would have no place to train or compete. The Athletic Director overrode Schmidt's objections but assured Schmidt that the campus pool would not be removed until a new campus pool was under construction.

15. The Board of Trustees and SDSU did not provide funding for a new campus pool. Schmidt sought through her own efforts to obtain funding to construct a new pool so the women's teams could recruit, train, and compete on an equal level. In the course of those efforts during the late 1990s, Schmidt was sexually harassed by a donor who repeatedly physically grabbed her and promised to donate money to construct a new pool if she would have sex with him. Schmidt reported this conduct at various times to the Athletic Director, the Assistant Athletic Director, and the head of SDSU's Athletic Department fund raising, but no action was taken to stop the donor's conduct. Bay told Schmidt

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that this conduct was not uncommon from this donor, that he was a big donor, and she needed to deal with it. Nothing was done by the Board of Trustees or SDSU to stop the donor's actions. Schmidt refused the donor's advances, and no donation for a pool was made by this person.

16. To locate funding for a pool, Schmidt spent long hours helping to develop and publicize more than one Associated Students' referenda to increase student fees to build a new swimming pool. One such initiative failed in 1998 by about 76 votes.

17. On or about 1999, SDSU demolished the campus swimming pool despite the absence of funding for a new pool on campus. Schmidt protested to Athletic Director Bay that, among other things, it was illegal to close the pool and leave the women's teams with no facility to train and compete, and the off-campus facility that had been located at which to train was dangerous and inadequate. Bay told Schmidt that he knew how difficult it would be to hold a team together, much less compete, but that Schmidt needed to support the decision to build an athletic center at the location of the existing campus pool. Bay assured Schmidt that if she could hold her team together, graduate athletes, and keep them out of trouble he would continue to support Schmidt and had no expectations about what the team could do given the circumstances.

18. With much difficulty, Schmidt located off campus facilities at which to train. Between 1999 and 2007, the women's swimming team trained at six different facilities. The primary facility was at a local recreation facility in a high crime area in

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San Diego. When that facility was unavailable, the women's swimming team trained at various off-campus facilities, such as Southwestern College in Chula Vista, Bud Kern's in Balboa Park, a Tierrasanta recreation facility, Allied Gardens Community Center, and at other facilities. Available training times were not consistent, and the facilities on occasion were not available for training for extended periods of time, necessitating a search by Schmidt for another facility. Around 2004, the team trained in the morning at the newly opened Kroc Center on University Avenue in San Diego and in the afternoons at another facility. Meets were hosted at the various training facilities.

19. The women's diving team also suffered from a lack of facilities and financial and administrative support from the Board of Trustees and SDSU. Because of the lack of funding, the women's diving team had no diving coach for the school years of 1994-1995 through 2002-2003. During those years, Schmidt consistently advocated to the Athletic Director and others at SDSU for increased funding to hire a diving coach but did not receive it. While some increased but not adequate funding was given for a diving coach during the school years from 2003-2004 through 2006-2007, the diving team, like the swimming team, had no on-campus facility at which to compete or train. The women's diving team was forced to train at various facilities throughout the county of San Diego and at difficult and inconsistent times.

20. Each year that the SDSU women's swimming and diving teams did not have an on-campus facility at which to train and hold meets, it became more difficult for Schmidt and her staff to recruit swimmers and divers to the women's teams.

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21. On or about 2001, SDSU terminated or did not renew the employment of Rick Bay. Some time thereafter, SDSU hired Gene Bartow as interim Athletic Director. On or about 2003, SDSU hired Mike Bohn as Athletic Director. Shortly after he was hired, Schmidt met with Bohn and explained the difficulties she had with holding a swimming team together without a facility and asked Bohn to meet with a potential donor to help raise funds for a new pool. Bohn refused to pursue the potential fund raising efforts of the donor for a new pool; he told Schmidt that "if she kept on this she would be walking the plank." Recruiting became increasingly difficult in the absence of proper pool and diving facilities.

22. Schmidt worked long hours on another Associated Students referendum to raise student fees to build a pool facility on campus and to design such a facility. In 2004, the referendum passed, with the SDSU students voting to increase their student fees to construct an on campus swimming pool facility.

23. Two days before the fall 2004 school term started, Schmidt was diagnosed with breast cancer. During the 2004-2005 school year, Schmidt had five surgeries and underwent chemotherapy in attempts to arrest the cancer. Although she was ill, lost much weight, and had lost her hair, Schmidt continued to work as best she could with the help of her part-time assistant coaches. Although Schmidt requested help from Athletic Director Bohn, she did not receive any help from him nor did he communicate with her for several months.

24. In the summer of 2005, Bohn departed SDSU employment and Jeff Schemmel was hired as Athletic Director. While still

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recovering from chemotherapy and without hair, Schmidt informed Schemmel of her cancer. Although ill for an extended period of time from the cancer, Schmidt kept working as head coach of the women's swimming team as best she could. In the summer of 2006, Schmidt developed a serious bacterial infection, which was probably caused by her numerous surgeries. In the fall of 2006, Schmidt's doctors inserted a port in her forearm for the intravenous injection of antibiotics for 1 ½ hours per day which she kept in her forearm for several months.

25. Over the years of her employment up to summer of 2005 and thereafter until the non-renewal of her contract and termination in 2007, Schmidt, and others in her behalf, advocated to Defendants, and their agents and employees, for gender equity in athletics and against sex discrimination in athletics and her employment, which included but is not limited to the following actions:

(a) Schmidt protested against the unequal and inadequate athletic facilities and opportunities for the women's swimming and diving teams;

(b) Schmidt protested against the unequal, changing, burdensome and varied practice times for women athletes in the swimming and diving program;

(c) Schmidt protested against the unequal pay for her and her part time assistant coaches;

(d) Schmidt protested against the absence of full time assistant coaches and a trainer compared to men's athletic programs;

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(e) Schmidt protested against unequal financial and administrative support and transportation for women athletes in the women's swimming and diving programs;

(f) Schmidt protested Schemmel's failure to grant her a multi-year contract in 2006 (only a one year contract was provided) and his imposition of unrealistic performance objectives for the 2006-2007 school year, although the contracts provided to male coaches were not so limited and did not include such unrealistic objectives;

(g) Schmidt protested against unequal recruitment of women swimmers and divers based on the absence of adequate and equal swimming and diving facilities compared to men's sports.

26. Schmidt's contract for the 2006-2007 school year was to expire by its own terms on May 31, 2007. On or about June 8, 2007, Schmidt was summoned to a meeting with Schemmel on June 11, 2007. At that time, Schmidt was scheduled for surgery for another cancer condition, melanoma, of which Schemmel was advised. Schemmel told Schmidt that he did not believe she could bring the women's swimming team to the "national level" and that he would not reappoint her for the following school year. Schemmel gave Schmidt an additional two month contract until July 31, 2007, to wind up her affairs at SDSU, after which she was no longer employed by SDSU.

27. The new SDSU on-campus pool facility, constructed by the efforts in large part of Schmidt and from student fees obtained by the student referendum on which Schmidt worked so hard, opened in March 2007, after the end of the 2006-2007 women's swimming and diving seasons.

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28. All of the performance reviews in Schmidt's SDSU personnel file have overall ratings from good to excellent.

29. Schmidt has never been disciplined by SDSU for any reason.

30. On or about mid-August 2007, Schemmel and SDSU announced they had hired a man to coach the women's swimming team. At present, SDSU's women's swimming and diving teams are coached entirely by men.

31. Schmidt is presently without work. In order to retain health care coverage, Schmidt was forced by the wrongful acts of Defendants to take early retirement from SDSU at a level of benefits greatly reduced from what would have been her normal retirement benefit.

32. On or about September 17, 2007, Schmidt filed complaints of discrimination against Defendants with the California Department of Fair Employment and Housing, which issued right to sue letters on or about September 21, 2007.

33. Schmidt has exhausted her administrative remedies. No further exhaustion of administrative remedies is required. In the alternative, further exhaustion of administrative remedies would be futile.

First Claim For Relief
(Against Board of Trustees and SDSU for
Sex Discrimination - Retaliation under Title IX)

34. Plaintiff incorporates by reference paragraphs 1-33 of this complaint.

35. Title IX of the Education Amendments of 1972, 20 U.S.C. §1681(a), provides that no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination on the basis of sex in any education program or

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activity receiving federal financial assistance.

36. Defendants Board of Trustees, SDSU, and DOES 1-15 denied Schmidt pay, limited the duration of her reappointment and contract, imposed unrealistic expectations, did not renew her contract, and terminated her from her position as head coach of the women's swimming and diving teams in retaliation for her protesting against gender inequity and advocating gender equity in athletics as alleged in this complaint, in violation of 20 U.S.C. §1681(a).

37. As a legal result of the wrongful conduct of Defendants, and each of them, Schmidt has suffered economic and non-economic damages in an amount according to proof.

Second Claim For Relief
(Against Board of Trustees and SDSU for Sex Discrimination under Title IX)

38. Plaintiff incorporates by reference paragraphs 1-33 and 35 of this complaint.

39. Defendants Board of Trustees, SDSU, and DOES 1-15 denied Schmidt pay, limited the duration of her reappointment and contract, imposed unrealistic expectations, did not renew her contract and terminated her from her position as head coach of the women's swimming and diving teams because of her sex and/or because of intentional discrimination against her as a result of sex discrimination against the female student athletes whom she coached, in violation of 20 U.S.C. §1681(a).

40. As a legal result of the wrongful conduct of Defendants, and each of them, Schmidt has suffered economic and non-economic damages in an amount according to proof.

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Third Claim For Relief
(Against Board of Trustees and SDSU for
Sex Discrimination – Retaliation under FEHA)

41. Plaintiff incorporates by reference paragraphs 1-33 of this complaint.

42. Defendants Board of Trustees, SDSU, and DOES 1-15, individually and by and through their agents and employees, inflicted upon Schmidt the adverse employment actions of denial of pay, limitation of the duration of her reappointment and contract, imposition of unrealistic expectations, and non-renewal of contract and termination of employment as head coach of the women's swimming and diving teams in retaliation for her protests against acts which constituted or which she reasonably believed constituted sex discrimination in violation of Govt. Code §§12940(a) and (h). In addition, Defendants Board of Trustees, SDSU, and DOES 1-15 failed to take all reasonable steps necessary to prevent retaliation against Schmidt from occurring in violation of Govt. Code §12940(k).

43. As a legal result of the wrongful conduct of Defendants, and each of them, Schmidt has suffered economic and non-economic damages in an amount according to proof.

Fourth Claim for Relief
(Against Board of Trustees, SDSU for
Sex Discrimination under FEHA)

44. Plaintiff incorporates by reference paragraphs 1-33 of this complaint.

45. Defendants Board of Trustees and SDSU, and DOES 1-15 inflicted upon Schmidt the adverse employment actions of denial of pay, limitation of the duration of her reappointment and contract, imposition of unrealistic expectations, and non-renewal

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of contract and termination of employment as head coach of the women's swimming and diving teams because of her sex in violation of Govt. Code §12940(a). In addition, Defendants Board of Trustees, SDSU, and DOES 1-15 failed to take all reasonable steps necessary to prevent discrimination against Schmidt on the basis of sex from occurring in violation of Govt. Code §12940(k).

46. As a legal result of the wrongful conduct of Defendants, and each of them, Schmidt has suffered economic and non-economic damages in an amount according to proof.

Fifth Claim For Relief
(Against Board of Trustees and SDSU for Medical Condition and Disability Discrimination under FEHA)

47. Plaintiff incorporates by reference paragraphs 1-33 of this complaint.

48. Defendants Board of Trustees, SDSU, and DOES 1-15 inflicted upon Schmidt the adverse employment actions of denial of pay, limitation of the duration of her reappointment and contract, imposition of unrealistic expectations, and non-renewal of contract and termination of employment as head coach of the women's swimming and diving teams because of her medical condition and disability, as defined in Govt. Code §12940(h) and (k), in violation of Govt. Code §12940(a).

49. As a legal result of the wrongful conduct of Defendants, and each of them, Schmidt has suffered economic and non-economic damages in an amount according to proof.

Remedy

Plaintiff Schmidt requests judgment as follows:

1. For economic damages, including but not limited to loss of back- and front-pay and benefits, in an amount according to

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proof;

2. For non-economic damages, including but not limited to emotional distress and loss of reputation, in an amount according to proof;

3. For prejudgment interest;

4. For reasonable attorney's fees;

5. For costs of suit;

6. For such other and further relief as the Court deems just and proper.

Dated: May 19, 2008

By: s/ Thomas Tosdal
Attorneys for Plaintiff
ttosdal@tosdalsmith.com

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all causes of action.

Dated: May 19, 2008

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